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BEFORE THE
Federal Communications Commission

FEB 25 1988

Federal Communications Commission
Office of the Secretary

WASHINGTON, D.C. 20554

In the Matter of

Determination of
Non-Dominant Status of
Common Carriers in the
Maritime Services

PR 92-257
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) No. _____
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To: The Commission

**PETITION FOR DETERMINATION OF
NON-DOMINANT COMMON CARRIER STATUS**

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FEDERAL COMMUNICATIONS
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BUREAU OF
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Mobile Marine Radio, Inc. ("MMR") and Waterway Communications System, Inc. ("WATERCOM"), pursuant to the invitation extended by the Federal Communications Commission in the Domestic Competitive Carrier rulemaking proceeding,^{1/} respectfully submit this Petition for Determination of Non-Dominant Common Carrier Status.^{2/}

1/ Fourth Report and Order, 95 F.C.C.2d 554, 582 (1983).

2/ As set forth herein, MMR and WATERCOM believe that the record warrants confirmation that maritime carriers are now regarded as non-dominant for regulatory purposes. If the Commission believes that further proceedings are required to confirm said status, it is requested that this pleading be treated as a Petition for Rulemaking.

I. IDENTIFICATION OF PETITIONERS

1. WATERCOM operates an automated maritime telecommunications system (AMTS) on frequencies in the 216-220 MHz band along the Mississippi, Illinois and Ohio Rivers and the Gulf Intracoastal Waterway. The WATERCOM system is an integrated, automated, interconnected telecommunications system providing full duplex telephony, data and facsimile services to vessels operating along the 4000 miles of inland waterways which constitute the principal water transportation network of the United States. WATERCOM also operates single sideband radiotelephony service and VHF service, both from stations on the Ohio River.

2. Mobile Marine Radio is a full service maritime communications company offering telegraphy services, consisting of Morse telegraphy, narrow-band direct-printing (NB-DP or marine telex) and radio-facsimile services, MF band (regional) and HF band (high seas) radiotelephony service, and local radiotelephony service operating in the VHF marine band serving the Alabama coastal area south of Mobile, Alabama, Mobile Harbor and the Alabama rivers.

3. Together, WATERCOM and MMR represent the full spectrum of maritime common carrier service.

II. BACKGROUND AND PURPOSE OF PETITION

4. In the Domestic Competitive Carrier proceeding, which is the basis for this Petition, the Commission divided common carriers into two categories: (1) dominant carriers, for whom continuing rate regulation was justified (e.g., AT&T); and (2) non-dominant carriers, for whom continuing regulation was not justified (e.g., terrestrial resellers). In the Fourth Report and Order in the Domestic Competitive Carrier proceeding, the Commission recognized that it had not yet considered the common carrier status of a number of categories of carriers, including the Public Coast Maritime Mobile Radio Service.^{3/} The Commission indicated that it would determine the status of such classes of carriers in response to petitions or on its own initiative.

5. In the International Competitive Carrier proceeding, the Commission determined that certain international carriers warranted classification as non-dominant.^{4/} Maritime service is considered an international service, pursuant to

^{3/} Fourth Report and Order, 95 F.C.C.2d at p. 582.

^{4/} International Competitive Carrier Policies, 50 Fed. Reg. 48191, 48202 (November 22, 1985).

Section 3(f) of the Communications Act. Subsequently, in PR Docket No. 87-252 concerning recision of the semi-annual reporting of public coast station operators, the Commission cited to the International Competitive Carrier proceeding for the premise that maritime carriers have been determined to be non-dominant.^{5/}

6. Although MMR and WATERCOM fully agree that they and other maritime service providers are "non-dominant," since the International Competitive Carrier proceeding specifically concerned international point-to-point service, WATERCOM and MMR submit this Petition in order to clarify the Commission's determination of the status of maritime service common carriers as non-dominant, or otherwise to obtain said status.

7. MMR and WATERCOM submit this Petition in order to obtain the benefits of reduced regulation available to non-dominant common carriers. In particular, non-dominant carriers are relieved of the tariff justification requirements of Section 61.38 of the Rules. Furthermore, non-dominant

^{5/} Elimination of Section 43.71 of the Commission's Rules which requires semi-annual reporting from Public Coast Station Operators, Notice of Proposed Rulemaking at 2 FCC Rcd 4213 (1987); Report and Order, FCC 88-22 (Feb. 8, 1988).

carriers enjoy lesser notice periods for new service offerings or changes in the terms of a tariff than dominant carriers. Moreover, maritime carriers would not be subject to price caps, if said regulatory program is adopted by the Commission in CC Docket No. 87-313.^{6/} Relaxed Commission regulation, in the manner indicated, would confer enhanced flexibility on WATERCOM and MMR in meeting user requirements.

III. GOVERNING STANDARD

8. The test developed by the Commission in the Competitive Carrier proceedings for determining the status of common carriers is whether they possess market power, defined as the ability to control prices. Carriers with market power are considered dominant, and carriers without market power are considered non-dominant.

9. With regard to service to ships at sea, the International Competitive Carrier proceeding determined that telephone and telex services are readily substitutable for one another. Also, Morse telegraphy service still is required for vessels subject to the SOLAS Convention.

^{6/} Policy and Rules Concerning Rates for Dominant Carriers,
2 FCC Rcd 5208 (1987).

Furthermore, service is provided by a number of carriers, varying in size from AT&T and MCI/RCA to independent telegraphy carriers on each coast of the United States.

Additionally, Inmarsat provides voice and non-voice service to ships at sea; and by all public accounts, the number of vessels equipped for satellite service is growing at a rapid rate. Moreover, vessels can route traffic through offshore and foreign coast stations for delivery through the international telephone and telex networks. Clearly, a competitive market exists for long-range maritime communications; and the findings recited by the Commission in Elimination of Section 43.71, supra, should be confirmed.

10. Similarly, the Commission has held that the short-range maritime market is fully competitive. In Petition of Riverphone, Inc., 2 FCC Rcd 239, 240 (1987), the Commission found that maritime VHF and AMTS services are competitive inter se and also with land mobile and cellular systems which may serve vessel traffic.

11. The Commission having already determined that a competitive marketplace exists for the various aspects of maritime mobile service, the conclusion is compelled that maritime carriers do not individually enjoy market power to control rates and so are non-dominant under the Commission's

policies and standards. MMR and WATERCOM respectfully request confirmation of the determination that maritime common carrier service is non-dominant for purposes covered by the Competitive Carrier proceedings.

WHEREFORE, THE PREMISES CONSIDERED, Waterway Communications System, Inc. and Mobile Marine Radio, Inc., respectfully request that the Commission issue a ruling declaring that Maritime Service common carriers are non-dominant and that said carriers henceforth will be regulated pursuant to the non-dominant carrier regulations and policies.

Respectfully submitted,

MOBILE MARINE RADIO, INC.

and

**WATERWAY COMMUNICATIONS
SYSTEMS, INC.**

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